



Matt Blunt, Governor • Doyle Childers, Director

DEPARTMENT OF NATURAL RESOURCES

www.dnr.mo.gov

Clean Water Forum Advisory Group for Unclassified Waters, Wetlands, and Tiered Aquatic Life Use

Statement of Intent on Draft Proposal for Unclassified Waters

June 15, 2006

Revision No. 2006-01

Prepared by: Missouri Department of Natural Resources Water Protection Program

Unclassified waters of the state have traditionally been protected by General (narrative) Criteria, but have heretofore not been assigned any designated beneficial uses. Such waters have been regarded as being too small to support recreational activity and having sporadic flow only in response to precipitation events. These conditions were envisioned as unsuitable to support the establishment and maintenance of a balanced, indigenous aquatic community.

In September of 2000, EPA noted in their review of the state's Water Quality Standards document, that there was "no clear default use-designation language in the Standards for unclassified waters." Neither did the state rebut the presumption required by the Clean Water Act that all waters are "fishable/swimmable". Missouri Water Quality Standards General Criteria provide protection of unclassified waters for aquatic life, incidental recreational contact, and livestock or wildlife watering. However, EPA interprets the Clean Water Act as requiring states to assign a default



use designation of “fishable/swimmable” unless a Use Attainability Analysis (a structured scientific assessment) confirms that the use neither exists nor is attainable.

Through the Clean Water Forum an Advisory Group was assembled to explore options for satisfying EPA’s request to apply the rebuttable presumption to unclassified waters. The advisory group met several times from February through June of 2006 in order to identify whether or not Missouri Water Quality Standards satisfied the requirement of the Clean Water Act and to better understand the specific obligations the Act places upon the state. The Advisory Group found that although such protections contained in the General Criteria protect certain beneficial uses, the standards do not specifically assign fishable/swimmable uses for unclassified waters as required by the Federal Clean Water Act at section 101(a)(2). The group discussed consequences for permittees should the designation occur without the development of a reasonable provision for relief as allowed under the Act.

The Water Protection Program has drafted a proposal to help the group to begin examining options, alternatives, and effects of incorporating the mandated uses of “fishable/swimmable” for all waters of the state into the Missouri Water Quality Standards. The proposal exists as one example of how the required designated uses may be applied. It is a starting point from which discussion may move forward to identify a workable manner by which the required changes will be implemented.

Elements of the current proposal include adding and refining definitions, expanding stream classifications, assigning the federally required use designations, and revising language in the standards rule to ensure the necessary changes can be understood and implemented

appropriately, as intended. Presently, there are essentially two stream classifications (P-permanent, C-intermittent) and four designated uses for aquatic life (cold, cool, general, & limited). The proposal, in its current form, incorporates unclassified waters into the universe of “classified” waters through creating two new stream classifications (G-general, N-narrative), and an additional designated use for aquatic life (narrative).

Classification	Description	Old aquatic life use designation	New aquatic life use designation
P—permanent	No change	Cold-water fishery	Cold-water use segment, no significant change
C—intermittent	No change	Cool-water fishery	Cool-water use segment, no significant change
G—general	Waters of the state lacking any structured assessment of hydrology or evaluation for existence of beneficial uses	General warm-water fishery	Warm-water use segment, no significant change
N—narrative	Waters that have received a structured assessment that determined aquatic life was absent or flow conditions prevent chronic exposure	Limited warm-water fishery	General use segment; general, chronic & acute criteria apply
N/A	N/A	Unclassified (no formal use designated, general & acute criteria apply)	Narrative use segment; only general & acute criteria apply

The proposal has the effect of applying specific chronic criteria for protection of aquatic life and recreational use designation to all heretofore unclassified waters of the state in the absence of a Use Attainability Analysis.

As a companion to this proposal, the program anticipates development of a procedure for conducting a Use Attainability Analysis specifically to determine whether or not the default aquatic life use exists or is attainable. Without developing a structured scientific method for ascertaining the degree to which a use may or may not be attainable, criteria that are overly stringent may be inappropriately applied where they are not necessary. The group has discussed that it is critical to the successful implementation of the required revisions to have a protocol or methodology in place for conducting a Use Attainability Analysis. This will ensure that the required protections are applied in a manner that is balanced and consistent with the vision and mission of the Missouri Department of Natural Resources, and the requirements of the Federal Water Pollution Control Act to provide for protection of recreational opportunity and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms [33 U.S.C. 1251 et seq. Sec. 301(h)(2) and RSMO 644.011]. The goal is for the advisory group to present a draft to the Missouri Clean Water Commission on January 03, 2007.